



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,041	03/03/2004	Sanford L. Britt	03-535-Z	4813

31718 7590 09/26/2005

BELASCO, JACOBS & TOWNSLEY LLP  
HOWARD HUGHES CENTER  
6100 CENTER DRIVE  
SUITE 630  
LOS ANGELES, CA 90045

EXAMINER
----------

RAEVIS, ROBERT R

ART UNIT	PAPER NUMBER
----------	--------------

2856

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/792,041

Applicant(s)

BRITT, SANFORD L.

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-3-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the loops and hook (of claims 3,4,27,28), spring "outside" (claims 6,30), "containers" (claim 51, line 2) the container must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 1-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

How does actuation of the trigger 215 displace the first 35 and second 40 seals? The operative connections of components 214,210,55,40 are not explained in a manner in either the written specification or drawings to permit for practice. How are these components operatively connected to carry out sampling?

As to claims 6,30, how can the spring be “outside”, and still cause the sampler to open/close? How is the spring structurally connected to the seals?

On p. 19, are “**Figures 1,2,4,5 and 8**” (line 10) a single embodiment? The written description in this manner suggests so, but the drawings certainly appear to be unrelated, let alone different.

On p. 19, to what extent is Fig 3 a “variant” (line 17) of Figure 2? After all, note even the container 15 is visible in Figure 3.

On p. 19, what structurally creates “removable engage means 70” (line 20)? No structure is clearly depicted in Figure 3 in a manner that provides for a working apparatus. How are elements 50,55 structurally related to means 70 in any figure?

On p. 20, how are “**Figures 1,2,4,5 and 8**” (line 1) a “further” (line 1) variant, as compared to the same figures on p. 19?

Art Unit: 2856

On p. 20, how are these same figures once again a “further variant” (line 1)?

How are they a variation of what was previously described in the written specification?

On p. 20, how does holes 75 have any structural/functional relation to means 70?

This is not apparent in Figures 3,4.

On pages 20,21,22,23,24,25,26,27, does use of the phrases “further variant” really mean another embodiment? After all, variations must be variations of a basic concept, and cannot be simply additions to an otherwise incomplete concept. How is the quoted phrase supposed to interpreted in this application?

On p. 22, “attached” (line 20) how? What are the “members’ (last line) “movable” (last line) with respect to? Do they move due to the “raising and lowering” (line 2 from last), or do they somehow move with respect to platform 195?

On p. 23, “engaged” (line 5) how? How does engagement allow for an “open” (line 7) condition?

On p. 24, “engage” (line 1) how? Figures 4 and 5 suggest that both members 205,210 and protrusions 50,55 are non-contacting members.

On p. 25, how does container 10 “enclose” (line 13) the platform 195? After all, the container does not contain that element 195. Isn’t the lead line for 195 (in Figure 9) incorrect? Where is element 195 in Figure 9?

On p. 27, is there really a “variant” (line 3) that has at least two (“dual” on line 4) containers 10? If so, where is this in any figure? How are the plurality of containers connected together in a single working system/apparatus?

Art Unit: 2856

As to claim 51, where in the written specification/drawings is there an enabling description of a *single* "sampling device" (line 1) that employs a *plurality* of "containers" (line 2)?

Claims 36,37,38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 36, is the "an open end" (line 3) one of the previously claimed opened ends (Double Inclusion), or is it a 3<sup>rd</sup> open end?

As to claim 38, what does this refer to in the written specification and/or drawings? Where in the specification/drawings is the platform enclosed inside the container?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickinson et al.

Dickinson et al teach (Figure 1) a dual-opening sample container, including: body 2 with open ends; first and second sealing stoppers 13, 14; first elastic member 15 that urges the seals to removably close the ends. The elastic member is both inside and outside the container. Compression of the stoppers into the container necessarily result in an increase of fluid pressure.

Art Unit: 2856

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al as applied to claim 1 above, and further in view of Banu.

As to claims 2,3,4, it would have been obvious to employ Banu's extended ends 14,15 with circular rings (visible in Fig. 8) to secure Dickinson's stoppers and lines 17 because Banu teaches that a ring may be inserted into a plug to secure a trigger line. It would have been obvious to employ removable rings (like a key chain) because ring must be removable in nature to permit for insertion of an item on that ring.

Claims 7,17,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. as applied to claim 1 above, and further in view of either Rosenblum or Numata et al.

As to claims 7,17,8,9, it would have been obvious to employ a cap 14 with a seal 30 as used in Rosenblum to seal Dickinson's container 2 because Rosenblum teaches that a longitudinally positioned cap and seal will effectively seal a sample container when desired. In the alternative, it would have been obvious to employ Numata's Teflon coated rubber stopper to seal Dickinson's container because Numata teaches (col. 19, lines 25-30) that a coated stopper will effectively seal a container. In addition, it would have been obvious to apply a cap to the same stopper because Numata teaches use of an aluminum cap to aid in sealing the stopper to that same container. Caps routinely

Art Unit: 2856

employ many of a variety of connection type elements, including threads and bayonet mounts.

Claims 11-13,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al. as applied to claim 1 above, and further in view of Numata et al.

As to claims 11-13, it would have been obvious to employ Numata's Teflon coated rubber stopper to seal Dickinson's container because Numata teaches (col. 19, lines 25-30) that a coated stopper will effectively seal a container.

As to claim 18, it would have been obvious to employ Numata's Teflon coated rubber material for Dickinson's stopper because Numata teaches (col. 19, lines 25-30) that a coated material will effectively seal a container. In addition, note that Dickinson's stoppers 13,14 have a flat upper surface that is indented into the stopper, suggestive that the stopper has a "membrane" in the stopper that *can* permit introduction of a needle.

Claims 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al as applied to claim1 above, and further in view of Niskin '012.

As to claim 16, it would have been obvious to employ a conically shaped seal because3 Niskin teaches (Figure 3) that conical seals provide for satisfactory plugging of a sampler.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al.



Art Unit: 2856

As to claim 19, the material of construction of the container need only be such that it does not react with the material being sampled, suggestive of use of common plastic or metal.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al as applied to claim 1 above, and further in view of Rosenblum.

As to claims 20-22, Rosenblum teaches (col. 4, lines 45-53) the desirability of removing samples from a few milliliters to several liters, suggestive of the claimed container dimensions/volumes.

Claims 23, 25-30, 35, 36, 38, 42, 43, 47, 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al, in view of Banu.

Dickinson's apparatus includes a removable clamp bands 5, 6 that serve as a platform, the platform including structure 44 that is connected to a raising/lowering device 35. The platform includes attachment members 17 that engage the seals. Dickinson employs a trigger 41, 42, which when pulled ("upward tug" on col. 4, line 41) results in the attachment members moving from a first position to a second position releasing the end seals.

Dickinson's members 17 are not clearly removable with respect to the seals.

As to claims 23, 26, 27, 28, 35, 42, 43, 51, it would have been obvious to employ Banu's extended ends 14, 15 with circular rings (visible in Fig. 8) to secure Dickinson's stoppers and lines 17 because Banu teaches that a ring may be inserted into a plug to secure a trigger line. It would have been obvious to employ removable rings (like a key

Art Unit: 2856

chain) because ring must be removable in nature to permit for insertion of an item on that ring.

As to claim 25, note elastic member 31 in Figure 7 of Dickinson, the member holding the attachment members in the first position.

As to claims 29 and 30, the elastic member is both inside and outside the container.

As to claim 36, note that Dickinson has a valve 20 that inherently covers an opening that passes into the cavity of the body 2.

As to claim 38, the platform portion behind the container 2 cannot be seen in Figure 1, suggestive that the container encloses the platform "within the outer horizontal dimensions" as claimed.

As to claim 47, the material of construction of the container need only be such that it does not react with the material being sampled, suggestive of use of common plastic or metal.

As to claim 51, it would have been obvious to employ the same trigger system with different containers to both take/store a plurality of samples from a single sampling excursion to minimize the travel time in sample taking.

Claims 31-33,45,52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al in view of Banu as applied to claims 23 and 51 above, and further in view of either Rosenblum or Numata et al.

As to claims 31-33,45, it would have been obvious to employ a cap 14 with a seal 30 as used in Rosenblum to seal Dickinson's container 2 because Rosenblum teaches

Art Unit: 2856

that a longitudinally positioned cap and seal will effectively seal a sample container when desired. In the alternative, it would have been obvious to employ Numata's Teflon coated rubber stopper to seal Dickinson's container because Numata teaches (col. 19, lines 25-30) that a coated stopper will effectively seal a container. In addition, it would have been obvious to apply a cap to the same stopper because Numata teaches use of an aluminum cap to aid in sealing the stopper to that same container. Caps routinely employ many of a variety of connection type elements, including threads and bayonet mounts.

Claims 39-41, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al in view of Banu as applied to claim 23 above, and further in view of Numata et al.

As to claims 39-41, it would have been obvious to employ Numata's Teflon coated rubber stopper to seal Dickinson's container because Numata teaches (col. 19, lines 25-30) that a coated stopper will effectively seal a container.

As to claim 46, it would have been obvious to employ Numata's Teflon coated rubber material for Dickinson's stopper because Numata teaches (col. 19, lines 25-30) that a coated material will effectively seal a container. In addition, note that Dickinson's stoppers 13, 14 have a flat upper surface that is indented into the stopper, suggestive that the stopper has a "membrane" in the stopper that *can* permit introduction of a needle.

Art Unit: 2856

Claims 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al in view of Banu as applied to claim 23 above, and further in view of Niskin '012.

As to claim 44, it would have been obvious to employ a conically shaped seal because3 Niskin teaches (Figure 3) that conical seals provide for satisfactory plugging of a sampler.

Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson et al in view of Banu as applied to claim 23 above, and further in view of Rosenblum.

As to claims 48-50, Rosenblum teaches (col. 4, lines 45-53) the desirability of removing samples from a few milliliters to several liters, suggestive of the claimed container dimensions/volumes.

Claims 1,5,6,14,15, is rejected under 35 U.S.C. 102(b) as being anticipated by either Phillips or Richard.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Phillips and Richard employ pull triggers.

Chapelle teach a spring 18 that is positioned entirely outside of a sample chamber.

Blackburn et al's seals 26,56 are strictly conical.

Sher et al use a septum 44.

Art Unit: 2856

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raemis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 3:30pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Robert*

*RAEMIS*